

**CALDWELL, FRIDAY, MAY 12, 2023, AT 8:50A.M.**

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

**RAY MONTIERTH and SUSAN )  
MONTIERTH, husband and wife, Assignees )  
of Centrum Financial Services, Inc., )**

**Plaintiffs-Third Party Defendants-  
Respondents, )**

**Docket No. 49419**

**v. )**

**HENDRIK DORSSERS, whose last known )  
address was in the State of Washington, )**

**Defendant-Appellant, )**

**and )**

**JUSTICE PREVAILS, LLC, a Washington )  
limited liability company, )**

**Defendant-Third Party Plaintiff-  
Appellant, )**

**and )**

**JOHN L. TILFORD and ROSANNA )  
TILFORD; NEWREZ LLC, a Delaware )  
limited liability company; MORTGAGE )  
ELECTRONIC REGISTRATION )  
SYSTEMS, INC. (MERS), a Delaware )  
corporation; and JOHN H. AND ORAH I. )  
BRANDT FOUNDATION, )**

**Third Party Defendants-Respondents, )**

**and )**

**L205-ID BEAR LANE, LLC, fka BTC VIII, )  
LLC, a defunct Washington limited liability )  
company; PATRICK L. MCCOURT, BINGO )  
INVESTMENTS, LLC, a Washington limited )  
liability company; AVATAR INCOME )  
FUND I, LLC; a Washington limited liability )**

company; and WELLS FARGO FOOTHILL, )  
 INC., a California corporation; )  
 )  
 Defendants-Third Party Defendants, )  
 )  
 and )  
 )  
 WILDER IRRIGATION DISTRICT and )  
 DOES 1-10, whose true names are unknown, )  
 who are unknown owners, heirs or devisees, )  
 )  
 Third Party Defendants, )  
 )  
 and )  
 )  
 DINA M. DORSSERS-THOMSEN, )  
 )  
 Defendant. )

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Appeal from the District Court of the Third Judicial District of the State of Idaho, Canyon County. Thomas W. Whitney, District Judge.

Johnson May, Boise, for Appellants.

White, Peterson, Gigray & Nichols, PA, Nampa, and Heidal Law Office, Kimberly, for Respondents John H. and Orah I. Brandt Foundation.

Gery W. Edson, PA, Boise, for Respondents Ray Montierth and Susan L. Montierth.

Akerman, LLP, Salt Lake City, Utah and Jones Williams Fuhrman Gourley, PA, Boise, for Respondents Mortgage Electronic Registration Systems, Inc.; Newrez, LLC; John L. Tifford; and Rosanna Tifford.

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This appeal concerns a dispute between the holder of the first priority mortgage, the holder of the second priority mortgage, and a variety of other parties of interest in a parcel of real property in Canyon County. The holders of the second priority mortgage, Ray and Susan Montierth (the “Respondents” on appeal), brought a foreclosure action against the holders of the first priority mortgage, Hendrick Dorssers and Justice Prevails, LLC (the “Appellants” on appeal), and a variety of other parties of interest to the real property in Canyon County—parties who are named in this action, but not participating on appeal.

Before the district court, the Montierths argued that the first priority mortgage had been barred by the statute of limitations. Appellants argued that a payment on their first priority mortgage, as provided in Idaho Code section 5-238, extended the statute of limitations for its enforcement. The district court disagreed, concluding that Idaho Code section 5-238 only applied

when the payment was made prior to the lapse of the statute of limitations. The district court found that the statute of limitations had lapsed when the payment was made on the debt. The district court also concluded it was neither a payment from an obligor nor in recognition of the whole debt. Accordingly, the district court concluded Idaho Code section 5-238 did not extend the statute of limitations and concluded the mortgage was still time barred by the statute of limitations. The Appellants moved for reconsideration and also objected to the proposed judgment offered to the district court. The district court denied the motion for reconsideration, holding that *Trusty v. Ray*, 73 Idaho 232, 234, 249 P.2d 814, 815 (1952), did not apply to the case. The district court also denied the objection to the proposed judgment finding that “it would be wrong for a cloud to remain on title” because the Appellants were entitled to foreclose that mortgage.

On appeal, the Appellants argue three points of error. First, Appellants argue that the district court erred in concluding the partial payment did not extend the statute of limitations for enforcement of the first priority mortgage under Idaho Code section 5-238. Second, Appellants argue that the district court erred in concluding a junior position lien holder can quiet title to a senior position lien holder. Third, the Appellants argue that the district court erred in issuing an order to strike the lis pendens.